

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

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4 FAIR ISAAC CORPORATION,)
5)
6 Plaintiff(s),)
7)
8 vs.) File No. 16-cv-1054(WME/DTS)
9)
10 FEDERAL INSURANCE)
11 COMPANY,)
12 and ACE AMERICAN)
13 INSURANCE COMPANY,)
14)
15 Defendant(s).)
16 -----

17 CONFIDENTIAL

18 ATTORNEYS' EYES ONLY

19 DEPOSITION

20 The following is the videotaped deposition of
21 THOMAS CARRETTA, taken before Julie A. Brooks, Notary
22 Public, Registered Professional Reporter, pursuant to
23 Notice of Taking Deposition, at Fredrikson & Byron,
24 4000 US Bank Plaza, 200 South Sixth Street,
25 Minneapolis, Minnesota, commencing at 9:09 a.m.,
Tuesday, October 9, 2018.

EXHIBIT

8

1 APPEARANCES:

2

On Behalf of Plaintiff(s):

3

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14 Also present:

15 Scott Breckheimer, videographer

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<p>1 is attached to here as this exhibit.</p> <p>2 And then the third document is Amendment</p> <p>3 Two to that same software license agreement, services</p> <p>4 agreement.</p> <p>5 Q. Okay. And generally, the Software</p> <p>6 License and Maintenance Agreement was entered into</p> <p>7 first, correct, in June of 2006?</p> <p>8 A. Right. June 30, 2006, is the date of</p> <p>9 the Software License and Maintenance Agreement.</p> <p>10 Q. Okay. And then Amendment One followed</p> <p>11 in August of 2006?</p> <p>12 A. This one is dated August 1st, 2006.</p> <p>13 Q. Then Amendment --</p> <p>14 A. Amendment One, excuse me.</p> <p>15 Q. Amendment Two followed in December of</p> <p>16 2006, correct?</p> <p>17 A. It is dated December 28th, 2006.</p> <p>18 Q. Again, you weren't involved in actually</p> <p>19 negotiating or drafting these documents?</p> <p>20 A. No, I wasn't.</p> <p>21 Q. One of your colleagues at the time</p> <p>22 was?</p> <p>23 A. That is correct.</p> <p>24 Q. You mentioned that you learned, at some</p> <p>25 point, that software was being used outside of the</p> <p style="text-align: right;">Page 57</p>	<p>1 A. Okay.</p> <p>2 Q. And then we can continue on with other</p> <p>3 aspects that you'd like to -- that you'd like to point</p> <p>4 out.</p> <p>5 MS. KLIEBENSTEIN: Were you done with</p> <p>6 your answer?</p> <p>7 THE WITNESS: I am done.</p> <p>8 BY MS. JANUS:</p> <p>9 Q. So you referenced the territory,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And that is on the first page,</p> <p>13 page 1 of 16, of the Software License and Maintenance</p> <p>14 Agreement. How is it that -- so how is it that you</p> <p>15 read the territory to prohibit use of the software</p> <p>16 outside of the United States?</p> <p>17 A. Because Article 2 says, Subject to the</p> <p>18 terms, conditions, and limitations of the Agreement,</p> <p>19 Fair Isaac grants. One of the terms is the</p> <p>20 "Territory," which it specifically says, "Territory"</p> <p>21 means with respect to the installation and physical</p> <p>22 location of the Fair Isaac products.</p> <p>23 Q. It means the United States of America?</p> <p>24 A. It means the United States of America.</p> <p>25 Q. You are looking at paragraph 2.1 to</p> <p style="text-align: right;">Page 59</p>
<p>1 scope of the license; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. Point us to what in the contract you are</p> <p>4 relying on for that position.</p> <p>5 A. Is the question about when I thought</p> <p>6 about it, or is the question what I think is violated?</p> <p>7 I don't understand the question.</p> <p>8 Q. What you think is violated.</p> <p>9 A. Okay. So the Software License and</p> <p>10 Maintenance Agreement and the two amendments are one</p> <p>11 understanding of the parties. And as I've said before,</p> <p>12 all of these terms and conditions work in tandem with</p> <p>13 each other so that there are clauses that talk about</p> <p>14 license restrictions, deemed assignments, confidential</p> <p>15 information, and so on.</p> <p>16 And I believe that they violated the</p> <p>17 agreement because of the activities that they undertook</p> <p>18 at Chubb & Son and that I can look to this agreement</p> <p>19 and say, well, one of the elements of it is the</p> <p>20 territory is the installation and physical location of</p> <p>21 the software.</p> <p>22 My understanding is it is not located --</p> <p>23 Chubb & Son has been using it outside the United</p> <p>24 States, as well as inside the United States.</p> <p>25 Q. So let's start with that.</p> <p style="text-align: right;">Page 58</p>	<p>1 determine what the scope of the grant is for use,</p> <p>2 correct?</p> <p>3 A. In part.</p> <p>4 Q. And that's -- the license grant to Fair</p> <p>5 Isaac products, that's a very typical term in FICO's</p> <p>6 software license agreements, correct?</p> <p>7 MS. KLIEBENSTEIN: Objection.</p> <p>8 Speculation.</p> <p>9 THE WITNESS: I don't know what the</p> <p>10 question is. Are you saying there's a license grant,</p> <p>11 typically, in our license agreements?</p> <p>12 BY MS. JANUS:</p> <p>13 Q. Correct, that is my question.</p> <p>14 A. There are typical license grants in</p> <p>15 license agreements.</p> <p>16 Q. Pretty key term of a license agreement,</p> <p>17 right?</p> <p>18 A. It is one of the terms.</p> <p>19 Q. Yes. And it is the granting language of</p> <p>20 the license, correct?</p> <p>21 A. Not exclusively.</p> <p>22 Q. Okay. But it is one place that you look</p> <p>23 to to see what license is being granted in this</p> <p>24 agreement, correct?</p> <p>25 A. Right, it is one of the components of</p> <p style="text-align: right;">Page 60</p>

<p>1 and FICO in connection with that license agreement; is 2 that fair? 3 A. I didn't negotiate the deal, so I don't 4 have any knowledge of it. 5 Q. So you don't know. You are just 6 speculating about why it is that it was drafted in that 7 way? 8 A. Well, I was trying to be responsive to 9 your question. 10 Q. Is it your position that the agreement, 11 that Exhibit 80, which is the Chubb & Son license 12 agreement, limits the use of Blaze anywhere outside of 13 the United States? 14 A. 80 has some extra material, I guess, so 15 this is not part of the agreement, these emails. 16 Q. I've been referring to Exhibit 80 as 17 these three documents that we're discussing as the 18 Chubb & Son agreement. 19 A. Okay. I'm just trying to be clear. 20 Q. Yeah. 21 MS. KLIEBENSTEIN: 80 is marked as the email 22 plus the -- 23 THE WITNESS: Yeah. 24 BY MS. JANUS: 25 Q. We're talking about the documents that I</p> <p style="text-align: right;">Page 101</p>	<p>1 Q. So it says with -- you are talking about 2 the territory definition. You are saying, "with 3 respect to the installation and physical location of 4 the Fair Isaac products." What does that mean? 5 A. Well, this software is installed at the 6 client's premises, so it is not a SAS product or a 7 hosted product that can be remotely accessed. This is 8 installed at the client's premises, and so that's why 9 it talks about physical installation -- excuse me, 10 physical location and installation. It is installed 11 somewhere in the United States on behalf of Chubb & 12 Son. 13 Q. Can it be used outside of the United 14 States? 15 MS. KLIEBENSTEIN: Objection. Vague. 16 BY MS. JANUS: 17 Q. Or is installation and physical location 18 the same as use, in your view? 19 A. The software is given to the client and 20 has certain configurability. I don't know how they 21 configured it. 22 Q. Is installation and physical location 23 the same as use, in your view? 24 A. I view it that way. 25 Q. Okay. So you view this clause relating</p> <p style="text-align: right;">Page 103</p>
<p>1 tabbed as the license agreements relating to Chubb & 2 Son, correct? 3 MS. KLIEBENSTEIN: Could you either ask 4 the question again or re-read it. 5 BY MS. JANUS: 6 Q. Yeah, I can ask it. Is it your position 7 that the Chubb license agreement prohibits Chubb's use 8 of the Blaze software outside of the United States? 9 A. The agreement and the two amendments 10 that we've been talking about limit the use to the 11 United States for physical installation and physical 12 location. 13 Q. Okay. So my question for you is: Does 14 that mean that, in your view, the license prohibits 15 Chubb from using the software outside of the United 16 States? 17 A. I didn't write it. But I can tell you, 18 it says, with respect to the installation and physical 19 location of the product means the United States of 20 America. 21 And it is also dependant on the Chubb & 22 Son business segment of this Federal Insurance Company, 23 so that is another factor to consider in its ability to 24 be used elsewhere. But they all have to be 25 employees.</p> <p style="text-align: right;">Page 102</p>	<p>1 to territory to, essentially, mean that territory means 2 use within the United States of America? 3 MS. KLIEBENSTEIN: I'm going to object 4 to that as calling for a legal conclusion. Are you 5 asking for his factual understanding or a legal 6 interpretation? 7 MS. JANUS: Whatever his interpretation 8 is. I would expect it is legal, since this is his job, 9 to interpret FICO licenses but -- 10 THE WITNESS: Let me try and answer 11 your question. You asked earlier if the word -- having 12 the words "territory" in here is a superfluous term. 13 The answer is no. Otherwise, it wouldn't be in the 14 agreement. So it is an important term. 15 And it says, "with respect to the 16 installation and physical location." That means the 17 products must be installed in the United States. 18 And since they are behind the firewall, 19 because it is an internal business purpose, that means 20 nobody outside of the firewall should be using it. 21 BY MS. JANUS: 22 Q. So your view is: When it says, "with 23 respect to the installation and physical location of 24 the Fair Isaac Products, means the United States of 25 America," that limits use anywhere other than the</p> <p style="text-align: right;">Page 104</p>

1 United States of America?
2 **A. Well, because there's a whole host of**
3 **laws that impact that.**
4 Q. I'm asking for the answer to my
5 question.
6 **A. I'm trying to answer your question.**
7 Q. No. But you just started not answering
8 my question.
9 **A. Well, you asked the question, does it**
10 **limit the use to the United States?**
11 Q. Yes. That's what I am trying to
12 understand.
13 **A. And the answer is, when you look at this**
14 **agreement, there's no export right clause. And I don't**
15 **expect you are familiar with this. But that means --**
16 **access outside of the United States is a deemed export,**
17 **so you would have to have the permission of the U.S.**
18 **government to do that, number one, within their rules.**
19 **And when you add territory in there, that means use is**
20 **implied to be in the United States.**
21 Q. Okay. So in terms of the territory
22 clause, installation and physical location, in your
23 view, means use?
24 **A. In the United States.**
25 Q. Okay. And, therefore, there can be no

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1 permissible use outside of the United States, fair?
2 MS. KLIEBENSTEIN: Objection. Vague and
3 calls for speculation.
4 THE WITNESS: The permissions are in the
5 agreement.
6 BY MS. JANUS:
7 Q. I'm asking about the agreement. So what
8 was unclear about my question? Are there permissible
9 uses outside of the United States, under your reading
10 of the license agreement?
11 **A. I don't think so.**
12 Q. Okay. So the answer to my question
13 would have been, yes, there are no permissible uses
14 outside of the U.S., in your view.
15 **A. My answer would be that I don't view it**
16 **as permissible uses outside of the United States.**
17 Q. Because you could not have a use that
18 did not involve an installation of the software; is
19 that fair?
20 **A. Right. You are not allowed to install**
21 **it outside the United States.**
22 Q. And any use outside of the United States
23 would involve installation of the software?
24 **A. Well, to be able to access it, yeah.**
25 **That's what I mean by the firewall.**

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1 Q. All right. Are there any other
2 provisions of the Chubb license agreement that are --
3 that support your position that use outside of the
4 United States is not allowed?
5 **A. Sure. So there's a clause, as an**
6 **example, that says -- let me find it for you. We've**
7 **talked about the entire agreement is guiding this.**
8 Q. And that is which clause?
9 **A. The Entire Agreement clause is Section**
10 **10.5.**
11 **And then I don't know if I've mentioned**
12 **this. But Clause 10.12, No Third Party Beneficiaries,**
13 **means that there's -- the agreement is not deemed to**
14 **create any right or benefit to a person not a party to**
15 **this agreement.**
16 **There's a clause that provides that you**
17 **can't assign the agreement to any third party. There's**
18 **two of those clauses. Or transfer without our prior**
19 **consent. There's the clause that deals with -- I'm**
20 **looking for it right now. It should be.**
21 Q. So we're sticking on territory right
22 now, right?
23 **A. No. But all of these impact territory.**
24 **That's what I am saying.**
25 Q. Well, I don't understand that. Because,

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1 as you know, the agreement was expanded to become an
2 enterprisewide license agreement, correct, in December
3 of 2006?
4 **A. "Enterprise" being a defined term.**
5 Q. Enterprisewide license agreement, right?
6 **A. Yeah, as defined.**
7 Q. Okay. And that included affiliates,
8 correct? We can go over all this in more detail. But
9 I just want to make clear that what I am talking about
10 is the use outside of the United States right now.
11 **A. Right. Well, let me finish answering my**
12 **question about the United States. So there's a clause**
13 **that says you are going to comply with law.**
14 Q. Okay. Point me to the specific clauses.
15 **A. Okay. 10.7.**
16 Q. Governing Law?
17 **A. Yep. So the agreement is governed by**
18 **New York law. And there's a reason that was chosen.**
19 **Because New York law construes these very strictly,**
20 **license agreements. And other laws apply, federal law.**
21 **So there's no right to export, for instance, in here.**
22 **So unless you ask for the right to export, your law is**
23 **strictly construed. It means you don't have the right**
24 **to export. So that implicates territory.**
25 Q. Okay.

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